IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 781 OF 2005

Ashok Raghunath Rokade .. Appellant

Vs.

Vraj Giriraj Co-Op. Hsg.
Soc. Ltd. and anr. .. Respondents

Mr. Omprakash Parihar for Appellant.
Mr. S.N. Vaishanawa i/by M/s. N.N. Vaishanawa & Co. for Respondent No.1.
Ms. Geeta Jogalekar for Respondent No.2.

CORAM: B.H. MARLAPALLE, J.

Date : August 04, 2005.

P.C.:

1. Heard Mr. Parihar the learned counsel for the appellant who has been impleaded as defendant no.1 in Suit No.2263 of 2002. It appears that about 15 months, after receiving the summons, the appellant failed to file Written Statement and, therefore, the trial court passed an order to proceed exparte. He moved Notice of Motion No.746 of 2004 praying for setting aside the order to proceed exparte and to take Written Statement on record. The said Notice of Motion has been dismissed by the impugned order dated 5-7-2005.

2. Along with the Notice of Motion the appellant filed his affidavit in support thereof and the only reason given for the delay caused in filing the Written Statement is that he could not understand the court's language. The affidavit verified on 10/2/2004 has been signed by the appellant in English and thus he appears to be an educated person knowing/ understanding English language. This was not a case of exceptional circumstances wherein the trial court could have invoked its discretion to allow the Written Statement to be taken on record, even though it was filed belatedly i.e. beyond 90 days. This court has taken a view that the period of 90 days could be relaxed in a given case if exceptional circumstances are made out. The appellant failed to meet this requirement of exceptional circumstances and it is abundantly clear that the appellant failed to take appropriate steps to file the Written Statement in time. The view taken by the trial court cannot be held to be illegal. The learned counsel for the appellant stated that appellant is willing to pay

costs and the trial court could have put him on terms and allowed the Written Statement to be taken on record by setting aside the order to proceed exparte. The court's discretion cannot be exercised for asking. The suit filed by the respondent-society prays for demolition of the alleged illegal shed put up by the appellant behind its premises. Defendant No.2 is the Municipal Corporation, Gr. Bombay which is a statutory body and if it is satisfied that the said construction is illegal, it is required to perform its statutory duty to take appropriate steps.

3. Hence, this appeal fails at the threshold and the same is dismissed in limine.

(B.H. Marlapalle,J.)